Beyond Bars as Barriers: Providing Confidential Services to People Who Have Experienced Sexual Violence in Confinement in Oregon

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“A big part of death penalty work – and of all good fiction writing, I believe – is abandoning our assumptions and letting others tell their truth.”

- Rene Denfeld
Learning Objectives

Advocates serving people who have experienced sexual violence in confinement in Oregon will be better able to:

• Identify ways to overcome barriers to confidential services for people who have experienced sexual violence in confinement.
• Use federal and Oregon privacy law as tools to serve these people.
• Support each other with these services.
Learning Objectives

• What are *your* learning objectives?
Poll 1

Where do you work? (select one)

- SA (primarily) services organization
- DV (primarily) services organization
- Dual SA and DV services organization
- Multi-service organization
- State coalition
- Prosecutor or other law enforcement office, etc.
- Other
Poll 2

What do you do? (select one)

• Advocate
• Attorney
• Other
Poll 3

What services do you offer to people who have experienced sexual violence in confinement?

- None
- Safety planning
- PREA-related advocacy
- General advocacy
- Support groups
- Referrals
- Sexual assault forensic examination – perform
- Sexual assault forensic examination – advocate support
- Legal services
Poll 4

Where do you provide services to people who have experienced sexual violence in confinement?

- Prisons
- Jails and/or lockups
- Community confinement
- Juvenile facilities
- Immigration detention facilities
- Dept. of Homeland Security holding facilities
- Unaccompanied children facilities
- Military brigs
- Other
Who are we talking about?

- **Confinement:**
  - Incarceration
  - Detention
- At least 2.3 million people confined in U.S.
- People of color disproportionately represented.
- People who are incarcerated often from marginalized communities and targeted for violence.
Prevalence of Violence

• 75% of women who are incarcerated have been abused by an intimate partner during adulthood; 80% were abused as children.

• 19% of men who are incarcerated have been sexually assaulted by other inmates; 21% by prison staff.

• Transgender people are 10 times more likely to experience sexual harassment or assault than general prison population.

• LGBTQI individuals who are confined are 6 times more likely to be sexually assaulted in prison than general population.
Prevalence of Violence

• Immigrants who are detained: U.S. Office of Inspector General received average of one complaint of SA/day between 2014-2016; only 2.6% of complaints were investigated.

• Sexual victimization allegations by youth who are detained more than doubled between 2005 and 2012.
OR-Specific Data/Info
“Our commitment to changing the world is going to have to be reflected in how we treat . . . incarcerated people . . . . It’s in that context that we change the world.”

- Bryan Stevenson
Why Confidential Services Matter for People Who Are Confined

Safety
Healing
Autonomy
Connection
(Your) Reputation
“Letting others tell their truth”
Let’s Discuss: Barriers to Confidential Services
Legal Tools: Federal
Recent Federal Law

• 2018 First Step Act

• Juvenile Justice and Delinquency Prevention Act (JJDPA), 2018 Reauthorization
Prison Rape Elimination Act

• To create culture of reporting and quality response to sexual abuse.

• Requires facilities to provide access to confidential support services from outside, community-based advocates “in as confidential a manner as possible.”
Where Does PREA Apply?

- Adult Prisons and Jails (28 CFR 115.5 et seq., Subpart A)
- Lockups (28 CFR 115.5 et seq., Subpart B)
- Community Confinement (28 CFR 115.5 et seq., Subpart C)
- Juvenile Facilities (28 CFR 115.5 et seq., Subpart D)
- Immigration Detention Facilities (6 CFR 115.5 et seq., Subpart A)
- DHS Holding Facilities (6 CFR 115.5 et seq., Subpart B)
- Unaccompanied Children (45 CFR 411.5 et seq., Subpart F)
VAWA Confidentiality
VAWA Confidentiality

- Grantees and subgrantees
- **MAY NOT DISCLOSE** personally identifying information
- **UNLESS:**
  - Written, informed consent
  - Statutory mandate
  - Court mandate
Releases of Information

• **DISCUSS:**
  - Benefits and risks of sharing information.
  - Why need a release and what information might be shared.
  - Who would have access to information.

• **AGREE:**
  - What information would be shared and with whom.
  - Be specific.

• **RECORD:**
  - Agreement about the scope of the release.
Signature of person who experienced sexual violence required UNLESS:

– Minor without legal capacity to consent:
  • Minor + parent or guardian sign.
  • Parent or guardian only signs if minor incapable of knowing consent.

– Adult who is legally incapacitated with court appointed guardian:
  — Guardian signs.
# Minors’ Legal Consent

## Minor of any age ORS 109.640, ORS 109.610, ORS 109.697
- Birth control information and services.
- STI-related hospital, medical, or surgical care.
- If unmarried and the custodial parent, or pregnant and expects to be custodial parent, may rent apartment and contract for utilities.

## Minor 14 or older ORS 109.675
- Outpatient mental health, drug, or alcohol treatment.
- Providers expected to involve parents by end of treatment unless
  - Parent refuses;
  - Clinically inappropriate;
  - Identified SA by parent;
  - Minor emancipated or separated from parent for 90 days.

## Minor 15 or older ORS 109.640, ORS 109.650
- Hospital care, and medical, dental or surgical diagnosis or treatment
- Minor may not consent if getting contact lens for the first time.
- A hospital, doctor, nurse or dentist may advise a parent/guardian without minor’s consent.

## Minor 16 or older ORS 419B.550 et seq., ORS 109.697
- May apply for emancipation
- May rent apartment and contract for utilities if not married or living with parent/guardian.
If Required to Disclose by Statute or Court Mandate

1. Make reasonable efforts to notify victims affected by disclosure; and

2. Take steps necessary to protect the privacy and safety of the affected persons.
“Prisoner advocacy is my passion. It is something that I’ve been doing pretty much my entire adult life. I feel prisoners are community members who have been taken from us but that they are still there. These services are very important and they literally cannot access services, so we have to bring services to them.”

- Focus Group Participant
Legal Tools: Oregon
Oregon Confidentiality and Privilege
Oregon Advocate Confidentiality

ORS 147.600

- Certified Advocate
- Confidential Communication
- Qualified Victim Services Program
- Victim
Oregon Confidentiality

- Certified advocate or a qualified victim services program
- may not disclose confidential communications or records
- without written,
- reasonably time-limited, and
- informed consent.
Oregon Confidentiality

• **Except**
  – Extent necessary if sued
  – “As otherwise required by law”
  – Aggregate, non-personally identifiable information
Oregon Privilege
ORS 40.264, Rule 507-1

Confidentiality

+ 

Legal or post-secondary school discipline proceeding
Mandatory Reporting
Mandatory Reporting

– **Child abuse** ORS 419B.005, *et seq.*

– **Elder abuse** ORS 124.050, *et seq.*

– **Abuse of a person with a disability** ORS 430.735, *et seq.*

– **Serious, non-accidental injury** ORS 146.710, *et seq.*

*NOT:* PREA REPORTING
MOUs
MOUs

- What are memorandums of understanding?
- How can they be a tool for protecting privacy in confinement settings?
How do we support each other with this work?
Thank you for the work you do!
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